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IN THE

Supreme Court of the United States

October Term, 1955

No. 532

MARGOT VON OPEL, as receiver and sequestrator of the property of FRITZ VON OPEL,

Petitioner,

v.

UEBERSEE FINANZ KORPORATION, A. G., Liestal, Switzerland, FRITZ VON OPEL, HERBERT BROWNELL, JR., Attorney General and as Successor to the Alien Property Custodian, FRIMA TRUST ESTABLISHMENT OF VADUZ, Liechtenstein, HANS FRANKENBERG, EUGEN MEIER and ADOLF GAENG,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the decree of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled action pursuant to its decision dated the 23rd day of June, 1955.

Jurisdiction

The judgment of the Court of Appeals was entered on June 23, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254. The time for filing this petition extended from September 21, 1955, to November 21, 1955 by order of this Court dated September 12, 1955.

Questions Presented

1. Can the claim of interest remaining in one whose assets have been vested by the Alien Property Custodian pursuant to the Trading With The Enemy Act, 40 Stat. 411, as amended, 50 U. S. C. A. Appendix, §§ 1, *et seq.*, be sequestrated by a receiver?

2. If the first question is answered in the affirmative, can such a receiver thereafter intervene as party plaintiff pursuant to Federal Rules of Civil Procedure, Rule 24, 28 U. S. C. A., in an action commenced against the Alien Property Custodian by the original claimant pursuant to Section 9(a) of the Trading With The Enemy Act, as amended?

3. Did the Court below misapply the holding of this Court in *Kaufman, et al.* v. *Societe Internationale, et al.*, 343 U. S. 156 (1953)?

Citations to Opinions Below

The opinion of the United States District Court for the District of Columbia is reported in 116 Fed. Supp. 145. The opinion of the Circuit Court of Appeals, printed in Appendix A hereto, *infra*, p. 8, is reported in —— Fed. 2d ——.

Statutes Involved

The statutory provisions involved are Federal Rules of Civil Procedure, Rule 24(a), 28 U. S. C. A.; and Sections 9(a), 9(f), 30 and 32(f) of the Trading With The Enemy Act, as amended (40 Stat. 411). They are printed in Appendix B, *infra*, p. 11.

Statement

On or about October 6, 1929, petitioner and respondent Fritz von Opel were duly married (47)* In or about 1932, said respondent purchased the 100 issued and outstanding shares of stock of respondent Uebersee Finanz Korporation, A. G., Liestal, Switzerland (hereinafter referred to as Uebersee) (57), and, thereafter, transferred to respondent Uebersee, among other things, certain shares of stock owned by him and described in detail in the Appendix below (46, 47). In or about 1940, petitioner and respondent Fritz von Opel emigrated to the United States. On or about June 4, 1942, the Alien Property Custodian seized in the State of New York said shares of stock (46).

On or about May 27, 1943, respondent Uebersee filed with the Alien Property Custodian, under the Trading With The Enemy Act, its notice of claim as lawful owner of the aforesaid property (52). On or about October 25, 1944, the above entitled action was commenced by respondent Uebersee against respondent Attorney General, as Successor to the Alien Property Custodian. Following trial on the merits, judgment was entered in favor of the Attor-

* Figures in parenthesis refer to page numbers of the Joint Appendix filed in the court below.

ney General on May 6, 1949.[1] Said judgment was affirmed by the Court of Appeals for the District of Columbia Circuit [2] and by this Court.[3]

Meanwhile, on or about April 28, 1949, respondent Fritz von Opel filed with the Custodian his notice of claim with respect to his interest in the aforesaid property, as lawful owner of 97% of the outstanding common stock of respondent Uebersee and, on that same day, filed his complaint for recovery of his interest against respondent Attorney General in the United States District Court for the Southern District of New York (Civil Action No. 50-70) (45-49). Said property, as pointed out above, had been vested in the State of New York and was maintained by the Custodian there.

Thereafter, on or about April 5, 1951, all property of respondent Fritz von Opel located in the State of New York, including his claim of interest against the Custodian, was sequestrated by order of the Supreme Court of the State of New York, County of New York, issued in a marital action between petitioner and respondent Fritz von Opel, entitled *von Opel* v. *von Opel,* Index No. 608-51 (11-14). On May 14, 1951, a judgment of separation was entered in said New York marital action in favor of petitioner, which judgment provided that respondent Fritz von Opel pay to petitioner, as and for her separate maintenance and support, the sum of $5,000 per month (15-17), no part of which has ever been paid.

On or about May 29, 1952, respondent Fritz von Opel was permitted to file, as a party plaintiff in the above entitled action, his complaint seeking recovery under his claim of interest in the property of respondent Uebersee

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[1] *Uebersee Finanz Korporation* v. *Clark,* 82 F. Supp. 606.

[2] *Uebersee Finanz Korporation* v. *McGrath,* 191 F. 2d 327; 89 U. S. App. D. C. 167, 196 F. 2d 557.

[3] *Uebersee Finanz Korporation* v. *McGrath,* 343 U. S. 205.

vested by the Custodian (56-58). His intervention as plaintiff herein was authorized under the Mandate of this Court dated May 3, 1952. Respondents Frima Trust Establishment of Vaduz, Liechtenstein, Hans Frankenberg, Eugen Meier and Adolf Gaeng were also permitted to intervene as parties at that time.

Inasmuch as the claim of interest in the vested property alleged by said respondent in his complaint filed herein was substantially identical to the claim of interest alleged by said respondent in his action in the Southern District of New York, which claim of interest had been sequestrated by petitioner as statutory receiver, an order was duly entered in the New York marital action on or about September 24, 1953 authorizing petitioner's intervention in the above-entitled action as statutory receiver of respondent Fritz von Opel's claim of interest herein (6-7). Thereafter, petitioner made her motion for leave to intervene in the above-entitled action, pursuant to Rule 24 of the Federal Rules of Civil Procedure. The motion was denied by the United States District Court for the District of Columbia. The Court below affirmed the order of the District Court.

Reasons for Granting Writ

1. The challenged decision (Appendix A, *infra*, p. 8) fails to resolve novel and unsettled issues stemming out of the decision of this Court in *Kaufman, et al.* v. *Societe Internationale, et al.*, 343 U. S. 156 (Appendix C, *infra*, p. 14—majority opinion). There, this Court held "that non-enemy stockholders of non-enemy foreign corporations have a severable interest in corporate assets seized by the Custodian * * *". The "severable interest" of respondent Fritz von Opel expressly recognized by this Court in the *Kaufman* decision was seized by petitioner herein as statutory receiver thereof. But the decision of the lower Court

nevertheless still fails to accept the necessary consequences flowing from this Court's recognition of the existence of such severable interest, stating "Whatever legal terminology should properly be used to describe appellant's interest, Congress has made no provision for its judicial disposition in a suit under Section 9(a) or under any other provision of the Trading With The Enemy Act".

2. The Court below erroneously interpreted the powers and authority of a statutory receiver over sequestrated property and thereby prevented petitioner from qualifying as a proper claimant within the requirements of Section 9(a) (Appendix B, *infra*, p. 11). Petitioner, as a statutory receiver, succeeded to the entire right, title and claim of interest of respondent Fritz von Opel to the property vested by the Alien Property Custodian. In short, his claim of interest, cause of action herein, or whatever it is labeled, became hers. The Court below, however, without citing any authority, refused to view petitioner as said respondent's successor in interest and characterized petitioner's interest, as statutory receiver, as "only an interest in Fritz von Opel's claim to the vested property". This has been done contrary to the well established holding of this Court that a statutory receiver is a *successor to title** not a "lienor". *Broderick* v. *Rosner*, 294 U. S. 629 (1935).

3. The decision below is of immediate importance far beyond the particular facts and parties. Congress never intended the results which flow from the lower Court's application of Section 9(f) (Appendix B, *infra*, p. 12). If its holding that the claim of interest remaining in respondent Fritz von Opel is not subject to seizure by operation of law is permitted to stand, no remedy will be available to one in petitioner's position to collect interests owed by a claimant recovering property under Section 9(a). The claimant need only to bring his action in a District Court of his own choosing, take his property when it is returned to him and

* Italics ours.

leave the United States, being careful to avoid the state in which his receiver, in this action his wife, is waiting. That Congress never intended this consequence is clear from amendments to the Trading With The Enemy Act. When the Act was amended by the Settlement of War Claims Act of 1928 [4] and provisions for recovery of property under Sections 9(b) and 9(n) were added, Section 30 was also added providing for the attachment of the property about to be returned under those sub-sections (Appendix B, *infra*, p. 12). Again, in 1946 when the 79th Congress set up an administrative procedure for the return of property, provision was made for its attachment under Section 32(f) prior to its return [5] (Appendix B, *infra*, p. 13).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: Washington, D. C.
November 21, 1955.

Respectfully submitted,

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[4] March 10, 1928, 45 Stat. 254-279, 50 U. S. C. A. Appendix §§ 9(b), 9(n) and 30.

[5] First War Powers Act of 1941—Amendment March 8, 1946, 60 Stat. 50, 50 U. S. C. A. Appendix § 32(f).

Appendix A

(Opinion of United States Court of Appeals for the District of Columbia Circuit)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12109

MARGOT VON OPEL,

Appellant,

v.

UEBERSEE FINANZ KORPORATION, A. G., LIESTAL, SWITZERLAND, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided June 23, 1955

MR. JOHN HARLAN AMEN, of the bar of the Court of Appeals, *pro hac vice*, by special leave of Court, with whom MR. RUSSELL HARDY was on the brief, for appellant.

MR. MYRON C. BAUM, Attorney, Department of Justice, with whom MR. GEORGE M. SEARLS, Attorney, Department of Justice, was on the brief, for appellee Herbert Brownell, Jr., Attorney General of the United States.

MR. EDWARD J. ENNIS, with whom MR. CLIFFORD FORSTER was on the brief, for appellee Fritz von Opel. MR. THURMAN ARNOLD also entered an appearance for appellee Fritz von Opel.

Appendix A

Before EDGERTON, Chief Judge, and PRETTYMAN and FAHY, Circuit Judges.

FAHY, Circuit Judge: The appeal is from an order of the District Court denying a motion for leave to intervene as party plaintiff filed by Margot von Opel, as receiver and sequestrator of the property of Fritz von Opel. The suit in which she seeks to intervene had been brought by her husband, Fritz von Opel, against the Attorney General, successor to the Alien Property Custodian, under Section 9(a) of the Trading with the Enemy Act [1] for recovery of property vested by the Custodian in 1942. Fritz von Opel's suit had been authorized by the Supreme Court in 1952 in *Uebersee Finanz-Korp.* v. *McGrath*, 343 U. S. 205, in view of the Court's decision rendered the same day in *Kaufman* v. *Societe Internationale*, 343 U. S. 156.[2] Appellant's status as receiver and sequestrator of property of Fritz von Opel grew out of an order of the Supreme Court of New York for New York County, so appointing her in marital litigation there pending between the husband and wife. A judgment had been entered in that litigation providing for her support by Fritz von Opel, and thereafter he had been adjudged in default.

It will be seen from the foregoing, and she so concedes, that appellant does not claim an interest in the vested property itself but only an interest in Fritz von Opel's claim to the vested property. See opinion of District Court accompanying its order herein, —— F. Supp. ——. If this is the correct position of the matter, her proposed intervention is not within the authorization of Section 9(a) of the Act, available only to one "claiming any interest, right,

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[1] 40 Stat. 411, 419, as amended, 50 U. S. C. A., App. § 9(a).

[2] Fritz von Opel's suit had taken the form of an intervention in the earlier suit, brought in 1944 by Uebersee Finanz-Korporation, A. G., against the Attorney General, which became known as *Uebersee Finanz-Korp.* v. *McGrath, supra.*

or title in any money or other property" vested by the Custodian. And if her interest is considered to be in the vested property, then clearly its nature is that of a lien barred from being litigated in a Section 9(a) suit against the Custodian. This is so because Section 9(f) provides:

> "Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court." (50 U. S. C. A. App. § 9(f).)[3]

Faced with this legal dilemma appellant seeks to bring her interest into a legal area somewhere between a claim of interest in the vested property and one in the nature of a lien. What she really seeks is protection of her claim against her husband, who on his part claims valuable property in the hands of the custodian which he seeks to recover in the main suit. Whatever legal terminology should properly be used to describe appellant's interest, Congress has made no provision for its judicial disposition in a suit under Section 9(a) or under any other provision of the Trading with the Enemy Act. Clearly it is not within Section 17 "to enforce" the provisions of the Act, or within Section 34 to review determinations by the Attorney General of claims of creditors. And litigation under the Act is limited to that which the Act itself permits. *Tiedemann* v. *Brownell*, —— U. S. App. D. C. ——, ——F. 2d——.[4]

Affirmed.

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[3] See *Berger* v. *Ruoff*, 90 U. S. App. D. C. 276, 195 F. 2d 775, *cert. denied*, 343 U. S. 950.

[4] Furthermore, Rule 24, Fed. R. Civ. P., relating to intervention, must be given application consistently with the limitations placed by Congress upon litigation under the Trading with the Enemy Act.

Appendix B

(Applicable Sections of the Trading With The Enemy Act, as Amended, and Federal Rules of Civil Procedure)

SECTIONS OF THE TRADING WITH THE ENEMY ACT, AS AMENDED

"§ 9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover

"(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: PROVIDED, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the

claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. * * *

* * *

"(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

"§ 30. Attachment or garnishment of funds or property held by Custodian

"Any money or other property returnable under subsection (b) or (n) of section 9 [section 9(b) or (n) of this Appendix] shall, at any time prior to such return, be subject to attachment in accordance with the provisions of the code of law for the District of Columbia, as amended, relating to attachments in suits at law and to attachments for the enforcement of judgments at law and decrees in equity, but any writ of attachment or garnishment issuing in any such suit, or for the enforcement of any judgment or decree, shall be served only upon the Alien Property Custodian,

who shall for the purposes of this section be considered as holding credits in favor of the person entitled to such return to the extent of the value of the money or other property so returnable. * * * "

Section 32(f) provides:

"At least thirty days before making any return to any person other than a resident of the United States * * * the President * * * shall publish * * * a notice of intention to make such return * * * After publication of such notice of intention * * * the property or interest or proceeds specified shall be subject to attachment at the suit of any citizen or resident of the United States * * * ".

FED. RULES CIV. PROC. rule 24, 28 U. S. C. A.

"Rule 24. Intervention

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof. As amended Dec. 27, 1946, effective March 19, 1948.

"(b) * * * "

Appendix C

(Opinion of Supreme Court of the United States)

SUPREME COURT OF THE UNITED STATES

No. 172—October Term, 1951

Eric G. Kaufman and Aenni C. Kaufman,
Petitioners,

v.

Societe Internationale Pour Participations Industrielles et Commerciales, S. A., etc., *et al.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

(April 7, 1952)

Mr. Justice Black delivered the opinion of the Court.

Acting under § 5(b) of the Trading with the Enemy Act,[1] the Alien Property Custodian vested in himself the American assets of Interhandel, a Swiss corporation.[2]

[1] 40 Stat. 411, 50 U. S. C. App. § 1, as amended by the First War Powers Act of 1941, 55 Stat. 839, 50 U .S. C. App. (Supp. V) § 5(b).

[2] Although the corporation is commonly called "Interhandel," its full legal name is Societe Internationale Pour Participations Industrielles et Commerciales S. A., etc. The American assets consisted of bank accounts and over 90% of the capital stock in the General Aniline & Film Corporation of Delaware, all of the assets apparently being valued at more than $100,000,000.00.

Appendix C

Interhandel sued in the District Court to recover the assets. The Custodian [3] answered alleging that the Swiss corporation was dominated and controlled by officers, agents, and stockholders who were engaged in a conspiracy with German nationals and with the German Government to operate the company's business in their interests while we were at war with Germany. Petitioners, United States citizens who own stock in Interhandel, filed a motion to intervene. They admitted the Custodian's charge that Interhandel was dominated by officers and stockholders who had been engaged in such a conspiracy. They also admitted the right of the Custodian to retain an interest in the seized assets proportional to the stock ownership of enemy stockholders. But petitioners contended that they and other non-enemy stockholders had claims in the corporate assets which it was the corporation's duty to protect. Alleging that the dominant enemy group which had charge of the suit would not press the corporate claim in a manner that would adequately protect the claims of innocent shareholders, petitioners asserted a right to intervene under Rule 24(a) of the Federal Rules of Civil Procedure. The District Court denied the motion to intervene, 90 F. Supp. 1011, and the Court of Appeals affirmed, —— U. S. App. D. C. ——, 188 F. 2d 1017. Underlying the claimed right of petitioners to intervene is an important question of the power of the Alien Property Custodian under the Trading with the Enemy Act, namely: What part of the assets of a corporation organized under the laws of a neutral country may the Custodian retain where part of the corporate stock is owned by enemies, part by American citizens, and part by nonenemy aliens? This question was reserved in *Clark* v.

[3] In 1946, the Attorney General succeeded to the powers and duties of the Alien Property Custodian. Exec. Order No. 9788, 11 Fed. Reg. 11981.

Uebersee Finanz-Korp., 332 U. S. 480, 489-490. To consider it we granted certiorari in this case. 342 U. S. 847.

First. Interhandel is a neutral corporation organized in Switzerland. Prior to 1941, even ownership of its stock and domination by enemy nationals would not have justified seizure of its assets. In order to reach the enemy interests in such neutral corporations, Congress amended the controlling Act in 1941. The background, scope and consequences of that amendment were discussed in *Clark* v. *Uebersee Finanz-Korp., supra.* We there held that the 1941 amendment authorized the Custodian to seize and vest in himself all property of any foreign country or national, even that of friendly or neutral nations. At the same time we refused to hold that the 1941 amendment deprived friendly or neutral nations or nationals of a right to have their assets returned if they could prove that they were free of any open or concealed enemy taint. The purpose of the amendment, we found, was "not to appropriate friendly or neutral assets but to reach enemy interests which masqueraded under those innocent fronts." *Clark* v. *Uebersee Finanz-Korp., supra* 485.

Thus, under the 1941 amendment the nonenemy character of a foreign corporation because it was organized in a friendly or neutral nation no longer conclusively determines that all interests in the corporation must be treated as friendly or neutral. The corporate veil can now be pierced. Enemy taint can be found if there are enemy officers or stockholders; even the presence of some nonenemy stockholders does not prevent seizure of all the corporate assets. But such a governmental seizure requires consideration of the plight of innocent stockholders. For as stated in the *Uebersee* case, the amendment does not contemplate appropriation of friendly or neutral assets. While Congress has clearly provided for forfeiture of

enemy assets, it has used no language requiring us to hold that innocent interests must be confiscated because of the guilt of other stockholders. Nor does any legislative history pointed out persuade us that Congress intended to inflict such harsh consequences upon the innocent. We decline to read such a congressional purpose into the Act.

Our holding is that when the Government seizes assets of a corporation organized under the laws of a neutral country, the rights of innocent stockholders to an interest in the assets proportionate to their stock holdings must be fully protected. This holding is not based on any technical concept of derivative rights appropriate to the law of corporations. It is based on the Act which enables one not an enemy as defined in § 2 to recover any interest, right or title which he has in the property vested. The innocent stockholder may not have title to corporate assets, but he does have an interest which Congress has indicated should not be confiscated merely because some others who have like interests are enemies.

Second. Section 9(a) of the Trading with the Enemy Act authorizes Interhandel to maintain this action for the recovery of all its assets because it has alleged that it is not enemy dominated. Alleging that they and others are nonenemy stockholders, petitioners charge that it is Interhandel's corporate duty to assert a claim for the return of their proportionate interests in the assets even though other stockholders who dominate the corporation are found to be enemies. Petitioners further allege that the corporate management refuses to assert such a claim, but continues to claim only a return of all assets on the theory that whatever return is obtained must be divided among enemy and nonenemy shareholders in proportion to their stock holdings. This position is taken, petitioners charge, because the suit is being controlled by the very stock-

holders on whose account the Custodian seized the property and whose interests will be worthless if they are found to be enemies. Petitioners allege that this enemy corporate management, fearing confiscation of its enemy-tainted interests, is about to settle the corporate claim with the Custodian for an amount less than the value of the nonenemy part of the assets. Should this be done, it is said the enemy management contemplates dividing the proceeds proportionately among enemy and nonenemy stockholders, thus violating the Act in two ways: (1) by depriving nonenemy stockholders of part of their property, and (2) by returning assets to foreign enemy stockholders.

A mere narration of the allegations shows that petitioners' fears are by no means fanciful. Indeed, the Government agrees with the dominant corporate management that the interests of enemy and non-enemy stockholders should be treated alike. The United States wishes to sell the entire assets of Interhandel. And it is argued that if nonenemy stockholders are to given a chance in court (which right is challenged), they should be limited to individual suits for money judgments against the Custodian. Petitioners claim a proportional right or interest in the specific assets of Interhandel and that they may not be driven to accept their share of whatever price the Government may happen to get from a sale of these valuable assets. In order to play safe, petitioners have filed a separate suit in a Federal District Court. But we think the questions involved in disputes like this can be more appropriately resolved in the corporate actions authorized by § 9(a) than by resort to a multiplicity of separate actions. In such suits the nonenemy stockholder in his own right may assert his nonenemy character in order to protect his own interest from the enemy taint caused by other stockholders. Courts trying such corporate actions have adequate equitable power and procedural flexibility to protect all interests

even when the corporate recovery is not for the benefit of all stockholders but only for those who are nonenemies.

In view of our holding that Congress has recognized that nonenemy stockholders of nonenemy foreign corporations have a severable interest in corporate assets seized by the Custodian, it follows that the allegations of these petitioners entitle them to intervene. These allegations, if true, show that petitioners' interests may be inadequately represented and that they may be bound by a judgment in this corporate action. This brings the claim of intervention squarely within Rule 24(a)(2) of the Federal Rules of Civil Procedure.[4]

Reversed.

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

(Dissent not printed.)

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[4] "Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; . . ." See *Sutphen Estates, Inc.* v. *United States*, 342 U. S. 19.